

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL K. KATAYAMA,

Plaintiff-Appellant,

v

CITY OF TROY,

Defendant-Appellee.

UNPUBLISHED
December 10, 2015

No. 323459
Wayne Circuit Court
LC No. 13-004515-CZ

Before: SHAPIRO, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

This case arises out of defendant's denial of plaintiff's Freedom of Information Act (FOIA)¹ request for several items related to his March 20, 2013 arrest in Troy, Michigan, on suspicion of drunk driving. Six days after his arrest, plaintiff's attorney submitted a FOIA request to defendant's FOIA coordinator, which requested the following items:

1. Copies of the police report relative the above captioned action [the possible case against plaintiff relative to his arrest];
2. Copies of the search warrant and affidavit relative the above captioned action;
3. Copies of all in-car videos, along with audio, from the patrol car of the arresting officer . . . from 3-19-13, at approximately 23:30 hours through 3-20-13 at approximately 02:00 hours[;]
4. Copies of all station house video and audio of [plaintiff] on 3-20-13[;]
5. Copies of all 911 calls and radio dispatch recordings relative the above captioned action.

¹ MCL 15.231 *et seq.*

Two days later, defendant denied the FOIA request. Plaintiff then brought this FOIA action against defendant. The trial court ruled that, with the exception of the police report, defendant's failure to disclose the requested records violated the FOIA. Plaintiff then filed a post-judgment motion for costs, attorney fees, and punitive damages. The trial court granted the motion as to certain costs, but denied attorney fees and punitive damages.

On appeal, plaintiff first argues that the trial court erred in finding that the initial police report was, at the time he made his request, exempt from disclosure under the FOIA.² We disagree.

MCL 15.231(2), provides:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

“FOIA is a manifestation of this state’s public policy favoring public access to government information, recognizing the need that citizens be informed as they participate in democratic governance, and the need that public officials be held accountable for the manner in which they perform their duties.” *Rataj v City of Romulus*, 306 Mich App 735, 748; 858 NW2d 116 (2014) (quotation omitted). “FOIA’s disclosure provisions must be interpreted broadly,” while its exemptions “must be construed narrowly.” *Id.* at 748-749. “Under FOIA, a public body must disclose all public records that are not specifically exempt under the act.” *Hopkins v Duncan Twp*, 294 Mich App 401, 409; 812 NW2d 27 (2011).

The FOIA exemptions are enumerated at MCL 15.243. “[U]nless the FOIA exemption provides otherwise, the appropriate time to measure whether a public record is exempt under a particular exemption is the time when the public body asserts the exemption.” *State News v Mich State Univ*, 481 Mich 692, 703-704; 753 NW2d 20 (2008) (footnote omitted). There are two distinct law enforcement exemptions: the first is described in MCL 15.243(1)(b) and the second is described in MCL 15.243(1)(s). The former is at issue in this case. MCL 15.243(1)(b)(i) provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

² We review de novo questions of statutory interpretation and application. *Rataj v City of Romulus*, 306 Mich App 735, 747; 858 NW2d 116 (2014). Generally, “whether a public record is exempt from disclosure under FOIA is a mixed question of fact and law.” *Id.* “However, when the facts are undisputed and reasonable minds could not differ, whether a public record is exempt under FOIA is a pure question of law for the court.” *Id.* at 747-748.

* * *

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

To prevail under MCL 15.243(1)(b)(i), the party opposing disclosure bears the burden of proving “both that an investigation was open and ongoing and that release of the requested records ‘would’ interfere with law enforcement proceedings.” *King v Oakland Co Prosecutor*, 303 Mich App 222, 231; 842 NW2d 403 (2013). A “finding that the requested information merely ‘could’ hamper an investigation is insufficient to satisfy the law-enforcement-proceedings exemption under MCL 15.243(1)(b)(i).” *Id.* at 232; see also *Evening News Ass’n v City of Troy*, 417 Mich 481, 506; 339 NW2d 421 (1983). The justification provided in support of an exemption must:

be more than conclusory, *i.e.*, simple repetition of statutory language. A bill of particulars is in order. Justification must indicate factually how a particular document, or category of records, interferes with law enforcement proceedings.

. . . The mere showing of a direct relationship between records sought and an investigation is inadequate. [*Evening News*, 417 Mich at 503 (internal citations omitted).]

Where part of a requested document is exempt, the exempt and nonexempt portions must be separated, with the nonexempt material disclosed. *Id.*

Plaintiff argues that because the case concerned his blood alcohol level, there was no ongoing investigation other than awaiting the results of his blood alcohol testing. We disagree. Defendant submitted an affidavit from the investigating officer explaining that at the time of the request, only six days after plaintiff’s arrest, there were several aspects of the investigation that were not complete. The officer also averred that the investigation was not limited to whether plaintiff had been driving under the influence of alcohol because plaintiff was found in a location specifically identified by the police as one known for narcotic trafficking, prostitution, and vehicular larcenies. Under these circumstances, we agree with the trial court that declining a FOIA request made so shortly after the arrest was not improper.

Plaintiff next argues that the trial court abused its discretion by denying his motion for attorney fees.³ We agree.

³ We review the grant of relief under MCL 15.240(6) for an abuse of discretion. *Prins v Mich State Police*, 299 Mich App 634, 641; 831 NW2d 867 (2013). “An abuse of discretion occurs when the trial court’s decision is outside the range of reasonable and principled outcomes.” *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

“[W]hether to award plaintiff reasonable attorney fees, costs, and disbursements when a party only partially prevails under the FOIA is entrusted to the sound discretion of the trial court.” *Local Area Watch v City of Grand Rapids*, 262 Mich App 136, 151; 683 NW2d 745 (2004). In pertinent part, MCL 15.240(6) provides:

If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys’ fees, costs, and disbursements.

In *Booth Newspapers, Inc v Kalamazoo Sch Dist*, 181 Mich App 752, 759; 450 NW2d 286 (1989), we upheld a trial court’s decision to reimburse the plaintiff for seventy-five percent of the fees incurred because the award “represented a reasonable apportionment of plaintiff’s fees to the nonexempt portion of the information requested.” We held that “[w]hen the plaintiff prevails only as to a portion of the request, the award of fees should be ‘fairly allocable’ to that portion.” *Id.* We have also held a trial court may award no attorney fees where a plaintiff succeeds with regard to only a very small part of his claim. See *Local Area Watch*, 262 Mich App at 151 (the trial court’s decision to award no attorney fees was reasonable because the plaintiff did not prevail on its central claim and because only a few documents had been disclosed late in violation of the FOIA).

In this case, the trial court found that pursuant to the FOIA, defendant should have released four of the five records plaintiff requested. In other words, it found that the majority of the requested records were withheld in violation of the FOIA. Given that plaintiff substantially prevailed on his claim, the decision to award no attorney fees was an abuse of discretion. Accordingly, we remand the case for the trial court to award plaintiff reasonable attorney fees pursuant to MCL 15.240(6), with due consideration of the factors set forth in *Smith v Khouri*, 481 Mich 519, 529-530; 751 NW2d 472 (2008).

Finally, plaintiff argues that the trial court erred by not awarding punitive damages under MCL 15.240(7).⁴ We disagree.

At the time the trial court ruled on plaintiff’s motion for punitive damages, MCL 15.240(7) provided as follows:

If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

⁴ MCL 15.240(7) was since amended, by 2014 PA 563, in ways that are immaterial to the instant analysis. References in this opinion to MCL 15.240(7) are to the former version of the statute.

A FOIA plaintiff is entitled to punitive damages under MCL 15.240(7) only if two requirements are met: (1) the defendant arbitrarily and capriciously refused to comply with the FOIA, and (2) the trial court ordered disclosure of an improperly withheld document. *Local Area Watch*, 262 Mich App at 153. Here, pursuant to an agreement reached by the parties during the litigation below, defendant *voluntarily produced* all the records in plaintiff's FOIA request. Defendant was never ordered to produce any records by the trial court. Therefore, the trial court correctly ruled that plaintiff was not entitled to \$500 in punitive damages under MCL 15.240(7).

We affirm the trial court's grant of partial summary disposition to defendant, affirm the trial court's denial of plaintiff's motion for punitive damages, and remand to the trial court for further proceedings consistent with this opinion as to attorney fees. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher